

Proposed Text of Regulations  
Good Faith and Correction of Appointments

Text added to the Board's regulations is shown in underline.

Text deleted from the Board's regulations is shown in ~~strikethrough~~.

TITLE 2. ADMINISTRATION  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board  
**Subchapter 1.3 Classifications, Examinations, and Appointments**  
**Article 10. Appointments.**

~~§ 249. Good Faith Appointment Requirements and Sanctions for Violation.~~

~~To be valid, a civil service appointment must be made and accepted in "good faith" under the civil service statutes and Board regulations. For purposes of administering the civil service statutes, including Government Code sections 19257 and 19257.5 and Board regulations, "good faith" is presumed to exist in the following circumstances:~~

~~(a) In order to make an appointment in "good faith," an appointing power and all officers or employees to whom an appointing power delegates appointment authority must:~~

~~(1) Intend to observe the spirit and intent of the law; and~~

~~(2) Make a reasonable and serious attempt to determine how the law should be applied; and~~

~~(3) Assure that positions are properly classified; and~~

~~(4) Assure that appointees have appropriate civil service appointment eligibility; and~~

~~(5) Intend to employ the appointee in the class, tenure and location to which appointed under the conditions reflected by the appointment document; and~~

~~(6) Make a reasonable and serious attempt to provide the relevant reference materials, training, and supervision necessary to avoid any mistakes of law or fact to the persons responsible for the pertinent personnel transactions; and~~

~~(7) Act in a manner that does not improperly diminish the rights and privileges of other persons affected by the appointment, including other eligibles.~~

~~Any officer or employee who violates any of the foregoing provisions of this regulation, or any other officer or employee in a position of authority who directs any officer or employee to violate any of these provisions, shall be subject to civil or criminal sanctions as provided in Government Code sections 19680, 19681, 19682, 19683, 19764, as well as adverse action as provided in Government Code sections 19572, 19583.5, or 19682.~~

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~~(b) In order to accept an appointment in “good faith,” an employee must:~~

~~(1) Intend to serve in the class to which the employee is being appointed under the tenure, location and other elements of the appointment as reflected by the appointment document; and~~

~~(2) Provide the appointing power with complete, factual, and truthful information necessary for a proper appointment; and~~

~~(3) Make a reasonable attempt to seek correction of any aspects of the appointment that the employee knows are illegal.~~

~~Violation of any of the foregoing provisions of this section by an employee shall be cause for adverse action.~~

~~If a lack of good faith exists on the part of either the appointing power or the employee, the Executive Officer may cancel the improper appointment without regard to the one-year limitation set forth in Government Code section 19257.5 subject to the provisions of section 266.~~

~~Authority Cited: Sections 18502 and 18701, Government Code. Authority Reference: Sections 19257, 19257.5, 19572, 19583.5, 19680, 19681, 19682 and 19683, Government Code.~~

### § 243. Good Faith Appointment Requirements.

(a) To be valid, all civil service appointments require that the appointing power make and the employee accept the appointment in good faith, as specified herein.

(b) An appointment made in good faith is presumed to exist when the appointing power, including any and all officers and employees of the appointing power who are delegated any responsibility related to the appointment, does all of the following:

(1) Intends to follow the spirit and intent of any applicable laws, regulations, and policies.

(2) Makes a reasonable and serious attempt to determine how any applicable laws, regulations, and policies should be applied to the appointment.

(3) Ensures that the position of the appointment has been properly classified.

(4) Ensures prior to the appointment that the selected candidate is eligible for the appointment.

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(5) Intends to employ the selected candidate in the classification, tenure, and location, and under the terms and conditions set forth in the appointment documents.

(6) Makes reasonable efforts to provide officers and employees involved in the selection process the relevant reference materials, training, and supervision necessary to avoid any mistakes of law or fact related to making civil service appointments.

(7) Acts in a manner that does not violate the rights and privileges of other persons affected by the appointment, including other eligible candidates.

(c) An appointment accepted in good faith is presumed to exist when the selected candidate does all of the following:

(1) Answers all questions, including but not limited to, questions related to experience, education, and level of competencies, truthfully and honestly.

(2) Makes sincere and reasonable efforts to provide complete, accurate, and factual information whether verbally or on documents or other materials.

(3) Makes prompt and reasonable efforts to correct any information, documents, or other materials that the employee, while initially believing were correct, later learns is inaccurate, misleading, or false.

(4) Intends to serve in the classification, tenure, and location, and under the terms and conditions set forth in the appointment documents.

NOTE: Authority Cited: Sections 18502, 18701 and 18660, Government Code.  
Reference: Cal. Const., art. VII, §§ 1 and 3; Sections 19050, 19257 and 19257.5, Government Code.

§ 243.1. Adverse Actions for Violations of Good Faith.

(a) Any officer or employee who violates or directs another officer or employee to violate any of the provisions set forth in section 243, subdivision (b) shall be cause for adverse action, as defined in Government Code section 19570 and provided in Government Code section 19572.

(b) Any employee who violates any of the provisions set forth in section 243, subdivision (c) shall be cause for adverse action, as defined in Government Code section 19570 and provided in Government Code section 19572.

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(c) Nothing herein shall be construed so as to contravene the grounds for unlawful conduct that may also be applicable, as set forth in Government Code sections 19680 et seq.

NOTE: Authority Cited: Sections 18502, 18701 and 18660, Government Code.  
Reference: Cal. Const., art. VII, § 3; Sections 18500, 19050, and 19572, Government Code.

§ 243.2. Correction of Unlawful Appointments.

(a) When the Board or Executive Officer determines that an appointment is unlawful, the Board or Executive Officer may take corrective action up to and including voiding the appointment under the following circumstances:

(1) Where the action to correct or void the appointment commences within one year after the appointment:

(i) The appointment was accepted and made in good faith by both the appointing power and employee; and

(ii) The appointment would not have been made but for some mistake of law or fact that if known to the parties would have rendered the appointment unlawful when made.

(2) Where the action to correct or void the appointment commences one year or longer after the appointment and the employee acted in other than good faith.

(b) When the Department determines that an appointment is unlawful, the Department shall take corrective action up to and including voiding the appointment if all of the following circumstances apply:

(1) The appointment was accepted and made in good faith by both the appointing power and employee.

(2) The appointment would not have been made but for some mistake of law or fact that if known to the parties would have rendered the appointment unlawful when made.

(3) The action to correct or void the appointment commences within one year after the appointment.

(c) When the Board or Executive Officer determines that an appointment is unlawful one year or longer after the appointment and the appointing power acted in other than good faith, the Board or Executive Officer may take corrective action as to the appointing

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power, including, but not limited to, voiding examinations administered by the appointing power, abolishing eligibility lists, and revoking delegated authority. If the employee is found to have acted in other than good faith, subdivision (a) (2) of this section shall apply.

NOTE: Authority Cited: Sections 18502, 18701 and 18660, Government Code. Reference: Cal. Const., art. VII, §§ 1 and 3; Sections 19050 and 19257.5, Government Code.

§ 243.3. Compensation or Reimbursement for Voided Appointments.

(a) For purposes of this section, the meaning of compensation as defined in section 9 shall apply.

(b) An employee who accepted an appointment in good faith that is subsequently voided or corrected shall retain only the compensation provided for in section 9 of the Board's regulations. In all cases, compensation shall be corrected on a prospective basis.

(c) An employee who acts in ways other than in good faith when accepting an appointment that is subsequently voided or corrected shall reimburse all compensation resulting from the appointment. In the event of an appeal to the Board challenging the amount of reimbursement, the Board may provide for less than full reimbursement of compensation based upon the evidence presented.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Cal. Const., art. VII, § 3; Section 19257, Government Code.

§ 266. Correction of Appointments.

~~When the Department determines that an appointment is unlawful, the Department shall determine the good faith of the appointing power and the employee under section 249 and shall take corrective action up to and including voiding the appointment, provided that:~~

~~(a) No corrective action shall be taken on any appointment which has been in effect for one year or longer if both the appointing power and the employee acted in good faith; and~~

~~(b) No corrective action shall be taken on any appointment which has been in effect for five years or longer unless:~~

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- ~~(1) the employee acted in other than good faith; or~~
- ~~(2) the Department determines that the rights of another employee are significantly endangered by the retention of the appointment in question.~~

~~When an unlawful appointment is terminated or corrected, the employee who acted in good faith shall retain only the compensation as defined in section 9. In all cases, compensation shall be corrected on a prospective basis.~~

~~The employee who acted in other than good faith shall reimburse all compensation resulting from the appointment. The Board in reviewing cases on appeal may, based upon the evidence, provide for less than full reimbursement of compensation.~~

~~Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Sections 19257 and 19257.5, Government Code.~~

### ~~§ 266.1.~~ 243.4. Remedial Measures.

~~(a) When the appointment of an employee who acted in good faith is being terminated pursuant to Section 266 section 243.2, the employee shall be afforded:~~

~~(1) deferred Deferred competition in any examinations in which, in the judgment of the Department, determines the employee would be likely to have likely competed if he or she had not accepted the terminated appointment, provided that the examination is in progress or that the eligible list which resulted from the last for the examination for the class is still existing and valid; and~~

~~(2) placement Placement back on the eligible list from which the employee was unlawfully appointed, provided that the eligible list still exists and is valid.~~

~~Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 19257.5, Government Code.~~

### ~~§ 266.2.~~ 243.5. Right to Respond.

~~At least 15 days prior to the date the Department plans to take corrective action on an unlawful appointment, the Department shall notify the employee and the employee's appointing power of the proposed action. This notice shall state the reason(s) for the proposed action and notify the employee and the appointing power of their right to respond to the notice within the 15 days either verbally or in writing.~~

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Where corrective action of an unlawful appointment is determined appropriate under section 243.2, subdivision (a) or (b), the Board, Executive Officer, or Department, whichever has decided to take the action, shall notify the employee and the employee's appointing power of the proposed action at least 15 days prior to the effective date of the proposed action. The notice shall state the reasons for the proposed action and notify the employee and the appointing power of their right to respond, either verbally or in writing, within 15 days of the date of the notice.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 18670, Government Code.

§ ~~266.3.~~ 243.6. Right to Appeal.

When ~~corrective~~ action is taken ~~on~~ to correct an unlawful appointment, the employee and the appointing power may file a written appeal ~~with~~ to the Board within 30 calendar days ~~after~~ of the date of notification of the Department's final decision ~~to take the corrective action, upon which the appeal is based.~~

Note: Authority cited: Section 18701, Government Code. Reference: Section 18670, Government Code.

Title 2. Administration  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board  
**Subchapter 2. Career Executive Assignment Rules**  
**Article 13. Service - General**

§ 548.120. Good Faith Requirement for CEA Appointments.

To be valid, CEA appointments require that the appointing power make and the employee accept the appointment in good faith as specified in section 243.

Note: Authority cited: Section 19889, Government Code. Reference: Section 19889.2, Government Code.

§ 548.120.1. Actions to Correct Unlawful CEA Appointments.

The provisions, procedures, or rights set forth in sections 243.1 (Adverse Actions for Violations of Good Faith), 243.2 (Correction of Unlawful Appointments), 243.3 (Compensation or Reimbursement for Voided Appointments), 243.4 (Remedial Measures) 243.5 (Right to Respond), and 243.6 (Right to Appeal) shall apply to CEA appointments found to be in violation of the good faith requirements of section 548.120.

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Note: Authority cited: Section 19889, Government Code. Reference: Section 19889.2, Government Code.

~~§ 548.121. Unauthorized Employment.~~

~~Any person acting in good faith in accepting an appointment or employment contrary to this chapter shall be paid by the appointing power the compensation promised by or on behalf of the appointing power or, in case no compensation is so promised, the actual value of any service rendered and the expense incurred in good faith under such attempted appointment or employment, and has a cause of action against the appointing power therefor.~~

~~§ 548.122. 548.121. Medical Examination.~~

~~An appointing power may require an employee serving in a career executive assignment to undergo a medical examination for the same purposes and in the same manner as is provided for the general civil service.~~

Note: Authority cited: Section 19889, Government Code. Reference: Section 19889.2, Government Code.

~~§ 548.123. Good Faith.~~

~~Good faith provisions as contained in Section 8 that apply to appointments in the general civil service shall apply in the same manner to appointments to positions in the Career Executive Assignment category.~~

~~Note: Authority cited: Section 18701, Government Code. Reference: Sections 19257 and 19257.5, Government Code.~~

~~§ 548.124. Correction of Appointments.~~

~~When the Department determines that a Career Executive Assignment appointment is unlawful, the Department shall take corrective and remedial action in the same manner as provided for the general civil service as provided in sections 266 and 266.1. An employee holding such a Career Executive Assignment appointment shall have the right to receive notice, to respond, and to appeal such corrective action pursuant to sections 266.2 and 266.3.~~

~~Note: Authority cited: Section 18701, Government Code. Reference: Sections 19257 and 19257.5, Government Code.~~